

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELLE NGUYEN, *et al.*,

Plaintiffs,

v.

MERCER ISLAND BOYS BASKETBALL
BOOSTER CLUB, *et al.*,

Defendants.

CASE NO. 2:23-cv-00855-RSL

ORDER GRANTING LEAVE TO
WITHDRAW AND RENOTING
DKT. # 86 AND 88

This matter comes before the Court on attorney Jenny Cochrane's amended "Motion for Order Granting Leave to Withdraw as Counsel for Plaintiff(s)." Dkt. # 92-1. There has been a complete breakdown in the attorney-client relationship between plaintiff Elle Nguyen and Ms. Cochrane. Ms. Nguyen fired Ms. Cochrane on or about August 12, 2024, having become convinced that Ms. Cochrane provided ineffective assistance in this case. There does not appear to be any hope of a reconciliation: Ms. Nguyen has lost trust in Ms. Cochrane and insists that the relationship be terminated. Although discovery has now closed, the motion to withdraw is GRANTED in these circumstances. The Court, however, retains jurisdiction over Ms. Cochrane with regards to the outstanding sanctions order and the MIBBBC defendants' motion for contempt.

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Ms. Nguyen is now proceeding *pro se* in this litigation. Unless and until she retains new counsel, she is expected to follow the local rules of this district (found at <https://www.wawd.uscourts.gov/local-rules-and-orders>) and the Federal Rules of Civil Procedure. Ms. Nguyen is advised that requests for relief from the Court must be in the form of a motion and all declarations must be signed, dated, and made under penalty of perjury. *See* LCR 7 and 10; 28 U.S.C. § 1746.¹

Plaintiffs A.A. and G.A. are minors and may neither represent themselves in federal litigation nor be represented by a non-lawyer parent. Fed. R. Civ. P. 17(c)(1); *Johns v. County of San Diego*, 114 F.3d 874, 977 (9th Cir. 1997) (a parent cannot bring an action on behalf of a minor child without retaining a lawyer). A.A. and G.A. may, however, sue in their own names and capacity through a “next friend.” Fed. R. Civ. P. 17(c)(2). Rule 17(c)(2) “requires a court to take whatever measures it deems proper to protect an incompetent person during litigation. Although the court has broad discretion and need not appoint a guardian ad litem if it determines the person is or can be otherwise adequately protected, it is under a legal obligation to consider whether the person is adequately protected.” *United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cnty., State of Wash.*, 795 F.2d 796, 805 (9th Cir. 1986) (footnote omitted) (citing *Roberts v. Ohio Casualty Insurance Co.*, 256 F.2d 35, 39 (5th Cir. 1958)). *See also Elliott v. Versa CIC, L.P.*, 328 F.R.D. 554, 556 (S.D. Cal. 2018) (“As a general matter, the decision

¹ Motions must be accompanied by a proposed order, and Ms. Nguyen must email a Word version of the proposed order to LasnikOrders@wawd.uscourts.gov. This inbox is not monitored on a regular basis and cannot be used for any other purpose, reason, or communication.

1 whether to appoint a guardian ad litem is normally left to the sound discretion of the trial
2 court.”) (internal quotation marks and citation omitted).

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4 Ms. Nguyen has not shown that she is qualified to represent A.A. and G.A. under
5 Rule 17(c)(1), nor has she sought appointment as guardian ad litem under Rule 17(c)(2).
6 The Court must therefore consider whether she has standing to act as “next friend” to her
7 children. “In order to establish next friend standing, the putative next friend must show:
8 (1) that the petitioner is unable to litigate his own cause due to mental incapacity, lack of
9 access to court, or other similar disability; and (2) the next friend has some significant
10 relationship with, and is truly dedicated to the best interests of, the petitioner.” *Massie ex*
11 *rel. Kroll v. Woodford*, 244 F.3d 1192, 1194 (9th Cir. 2001). There is no dispute that, as
12 minors, A.A. and G.A. are unable to litigate on their own in federal court. The first criteria
13 is therefore satisfied. As their mother, Ms. Nguyen plainly has a “significant relationship”
14 with the boys. While Ms. Nguyen has not explicitly asserted her dedication to the best
15 interests of A.A. and G.A., her parental relationship and actions in the case suggest that she
16 is driven by such dedication. Accordingly, the Court finds that recognition of Ms. Nguyen
17 as a “next friend” to A.A. and G.A. for purposes of this litigation will protect the minors’
18 rights in the action while allowing them to pursue the claims that have been asserted to
19 judgment.
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23 Plaintiffs request that the Court issue a new case schedule, reopening discovery and
24 the expert disclosure deadlines so that plaintiffs can correct what they see as the errors and
25 omissions of their prior counsel. It is well settled, however, that a client, having chosen her
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1 representative and agreed to have counsel act as their agent before the Court, is bound by
2 counsel's representations and actions. "[T]he established principle [is] that the faults and
3 defaults of the attorney may be imputed to, and their consequences visited upon, his
4 client." *In re Hill*, 775 F.2d 1385, 1387 (9th Cir. 1985). *See also West Coast Theater Corp.*
5 *v. City of Portland*, 897 F.2d 1519, 1523 (9th Cir.1990) (same); *Pioneer Inv. Serv. Co. v.*
6 *Brunswick, Assocs. Ltd.*, 507 U.S. 380, 396 (1993) ("[C]lients must be held accountable for
7 the acts and omissions of their attorneys"); *Magala v. Gonzales*, 434 F.3d 523, 525 (7th
8 Cir. 2005) ("[I]t has long been understood that lawyer's mistakes in civil litigation are
9 imputed to their clients"). The Court has taken care to ensure that only Ms. Cochrane is
10 responsible for the Rule 11 sanctions that have been imposed in this case, but finds that
11 allowing plaintiffs to restart the litigation at this stage because their choice of counsel went
12 awry would unduly prejudice defendants and interfere with the timely and efficient
13 administration of justice. In cases such as this, where the "litigants are bound by the
14 conduct of their attorneys," the client's remedy is a malpractice case against prior counsel,
15 not starting the litigation anew. *Nealey v. Transport. Maritima Mexicana, S.A.*, 662 F.2d
16 1275, 1282 n. 13 (9th Cir. 1980); *see Link v. Wasbash R.R. Co.*, 370 U.S. 626, 634 n. 10
17 (1962) ("[I]f an attorney's conduct falls substantially below what is reasonable under the
18 circumstances, the client's remedy is against the attorney in a suit for malpractice.");
19 *Magala*, 434 F.3d at 526 ("The civil remedy is damages for malpractice").
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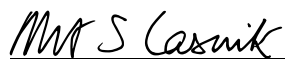
25 That having been said, there are motions pending in this case that may ultimately
26 impact the case schedule, such as plaintiff's motion to amend and defendants' various

1 discovery motions. Dkt. # 52, 73, 86, and 88. Two of these motions were filed at a time
2 when the relationship between plaintiffs and Ms. Cochrane was unraveling, and responses
3 were not filed. In order to give plaintiffs a full and fair opportunity to litigate the issues
4 that are currently before the Court and to give the Court time to resolve the outstanding
5 discovery matters before the dispositive motion deadline arrives, the Court orders as
6 follows:
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8 1. The trial date and remaining pretrial deadlines are STRICKEN, to be reset when
9 the Court has resolved Dkt. # 52, 73, 86, and 88.
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11 2. The Clerk of Court is directed to renote Dkt. # 86 and 88 on the Court's calendar
12 for Friday, October 18, 2024. Plaintiffs' responses must be received by the Court on or
13 before Monday, October 14, 2024, with defendants' replies due on the note date.
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16 Dated this 26th day of September, 2024.

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18 Robert S. Lasnik
19 United States District Judge
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